

IN SENATE OF THE UNITED STATES,

JANUARY 24, 1820.

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Mr. JOHNSON, of Kentucky, from the Committee on Military Affairs, to whom was referred the petition of Banister Stone, submitted the following

REPORT:

That the petitioner prays to be released from the obligation of a contract entered into by him, as the security of Adam Carruth, in the year 1816, by which said Carruth was bound to deliver to the Government ten thousand stand of small arms. It is stated that this contract originated from one of precisely similar import, which had theretofore been entered into between a certain Elias Earle and the Government, which remained unexecuted, and upon which said Earle had received certain advances of money beyond the arms furnished by him; that said contract with Earle was transferred to said Carruth, subject to its then condition. undertaking, thereby, to fulfil its stipulations; that the advance made to said Earle was to be considered and taken as so much advanced to said Carruth, on this subsequent undertaking. The said Carruth proceeded to the execution of his contract, and delivered somewhere about 2,500 stand of arms, for which he received payment; that one hundred and sixty stand of arms were subsequently delivered, but payment was refused, in consequence of a notice from the security, expressing a desire that no farther payment should be made until he was relieved from responsibility. It is admitted that the contract has been but thus partially complied with; and that, in consequence of its violation, and the balance due upon the advance of money beyond the number of arms furnished, a suit has been instituted for the recovery of what may be justly and equitably due the Government.

It is further alleged, that the said Carruth continued to manufacture arms for the Government upon this contract, and had on hand 700 stand or upwards, when his creditors, having obtained judgments, seized upon the whole of his property, and reduced him to insolvency.

In support of his prayer for a release, he avers that the said 700 stand of arms, taken and sold at a sacrifice, under execution, were subsequently sold to the state of South Carolina for 10,515 dollars, being more than the advance which had been made to said Earle on the original contract, when, as he contends, the arms belonged of right

to the Government, and should have been retained and taken to satisfy their claim. As a further circumstance in support of his petition, he avows his entire ignorance of the state of facts in relation to the advance which had been previously made to Earle, at the time he signed the contract with Carruth. Admitting the facts to be true, your Committee deem it improper to grant a release to the petitioner. The precedent would be fraught with much mischief, and would result in ruinous consequences. Whatever equitable circumstances there may be, if any, the petitioner can avail himself of them by way of defence, before the judiciary, to whom matters of this kind peculiarly belong.

The ignorance of the petitioner as to the facts, may be a misfortune to him, but it was his duty to have inquired into and known them. The government has released the original party; the petitioner has confided in the subsequent contractor, and must share his responsibility. The Government made use of no undue means in originating his liability. and if injury be, to him, the consequence, the act was his own, and purely voluntary.

The petitioner, in the event of a failure to obtain a release, asks time to discharge whatever may be decreed against him, by annual instalments.

The Committee decline giving any opinion on this part of the petition. The Treasury Department has full power to grant such indulgence wherever it may be expedient and proper.

The Committee therefore recommend the following resolution:

*Resolved*, That the prayer of the petitioner ought not to be granted.